



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,131	01/02/2002	James Larry Peacock	BEA920010037US1	8794

30011 7590 03/15/2005

LIEBERMAN & BRANDSDORFER, LLC
12221 MCDONALD CHAPEL DRIVE
GAITHERSBURG, MD 20878

EXAMINER

AUVE, GLENN ALLEN

ART UNIT	PAPER NUMBER
----------	--------------

2111

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<i>Advisory Action Before the Filing of an Appeal Brief</i>	Application No. 10/040,131	Applicant(s) PEACOCK, JAMES LARRY	
	Examiner Glenn A. Auve	Art Unit 2111	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

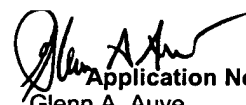
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: 9 and 18.
- Claim(s) rejected: 1-8, 11-17, 19 and 20.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: As noted in the previous Office Action and reiterated in the Examiner's Interview Summary, the examiner believes that the Klein reference shows the claimed limitations either explicitly or inherently/implicitly as indicated. Applicant argues that the external sensor embodiment shown in fig. 4 of Klein does not show detecting "initial movement" of the card. However, since the detector does detect whether or not the card is inserted it is submitted that it must detect some sort of "initial movement" of the card in order to determine that it is removed (or inserted) in the slot. Applicant argues that since the brief explanation of Klein's fig. 4 in column 6 states that the switch is depressed when the card is fully inserted in the slot, that this means it does not detect "initial movement". However, even assuming that applicant's interpretation is correct, the switch 406 would certainly then detect "initial movement" since such movement would take the card from the "fully inserted" state to some not fully inserted state. However, it appears that Klein fully intends for the embodiment described in fig. 4 to be merely a variation with respect to where the sensor is located and that otherwise it operates in exactly the same fashion as the embodiment described with respect to fig. 2 or 5. Since applicant's arguments are not persuasive the application is not in condition for allowance and the claims remain finally rejected or objected to as noted above. The amendments to the specification are acceptable and will be entered on appeal. As noted in the interview and in applicant's remarks, since the figures in question form part of the original specification no new matter is being introduced with the amendments to clarify the operation of the invention as illustrated.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


Application No. 10/040131
Glenn A. Auve
Primary Examiner
Art Unit: 2111

U.S. Patent and Trademark Office
PTOL-303 (Rev. 9-04)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20050314